

**REMARKS**

The specification is herein amended to correct typographic errors and the like.

By this Amendment, claims 36-40 are newly added. Therefore, claims 1-40 are pending in the application.

The claims are presently amended to overcome informalities indicated in the pending claim rejection under 35 U.S.C. § 112, second paragraph. The non-narrowing claim amendments were not necessitated by any prior art, applied or otherwise, and do not create any estoppel. The present amendment to claim 1 changes the term “near” to --proximate--. Such amendment was done only to address the presently pending § 112 rejection and Applicant submits that there is no difference in meaning between the term “near” and the term “proximate.” Since both “near” and “proximate” mean the exact same thing as regards the present invention, the scope of claim 1 is not thereby changed.

Applicant thanks the Examiner for indicating that claims 11, 19-24, and 34 contain patentable subject matter and would be allowable absent those claims’ rejection under 35 U.S.C. § 112, second paragraph. Since it is believed that the presently-submitted claim amendments cure the § 112 informalities, Applicant respectfully submits that claims 11, 19-24, and 34 are now in allowable condition.

Reconsideration and allowance of all claims are respectfully requested in view of the following remarks.

- Claims 1-3, 5, and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Clausen* (U.S. Patent No. 5,794,709 and/or No. 5,906,243). Although the present Office action does not indicate which of the related *Clausen* patents is being applied, the Examiner has confirmed that the ‘709 *Clausen* is being applied. Applicant respectfully traverses the § 102 rejection.

*Clausen* does not teach or suggest a receiving area located proximate the blade for receiving earth scraped from the ground surface by the blade, a rotatable axle for providing movement of the scraper to allow the blade to scrape the earth, the axle connected with respect to the blade and the receiving area, or a track apparatus connected with respect to the rotatable axle, the track apparatus having: a continuous flexible track having an upper length and a ground-engaging lower length; an axle wheel engaging the inner surface of the flexible track along the upper length to drive the flexible track in response to rotation of the axle; and a frame for mounting the axle wheel, as claimed in independent claim 1.

Rather, *Clausen* discloses a power blade 10 having a frame mountable to the front of a vehicle 12; the frame has a track 16 and a bottom plate 26 directly beneath the track, the bottom plate 26 and track 16 operating to move a layer of earth from in front of the vehicle to a side of the vehicle (e.g., Title; Abstract; col. 3: lines 44-46; col. 4: lines 10-11; Fig. 1). The track 16 is best shown in Fig. 1 of *Clausen*, track 16 being protected from touching the ground by bottom plate 26. In operation, the *Clausen* device is used to move earth to the side of the vehicle (e.g., 2: 18-19), and has ground-engaging teeth 28 that act to maintain a straight direction of travel for the vehicle (e.g., 2: 43-45). The teeth 28 are fixedly mounted beneath plate 26 (e.g., 4: 22-23). The obtuse-angled (e.g., 4: 13-14) bottom plate 26 acts to sever a layer of soil from the surface of the earth, whereupon the layer of soil is thereafter transported to the side of the vehicle 12 by track 16.

By comparison, *Clausen* does not teach or suggest a receiving area because the claimed receiving area is a structural part of the claimed scraper whereas the *Clausen* device 10 pushes the earth away from the attachment 10 and does not have any structure for receiving scraped earth.

*Clausen* does not teach or suggest a rotatable axle for providing movement of the scraper to allow the blade to scrape the earth because *Clausen*, as shown in Figs. 1, 2, 3, 5, and 8,

apparently raises and lowers the attachment 10 using cylinders that are a part of the vehicle 12. *Clausen* does not teach or suggest a rotatable axle for providing movement of the scraper to allow the blade to scrape the earth, the axle connected with respect to the blade and the receiving area, because *Clausen* apparently uses cylinders of vehicle 12, rather than using any sort of rotatable axle, for raising and lowering attachment 10, and because *Clausen* does not teach or suggest a receiving area, connected with respect to such an axle, or otherwise. It follows that *Clausen* also does not teach or suggest a track apparatus connected with respect to such a rotatable axle.

Further, *Clausen* does not teach or suggest any of the claim limitations related to such a track apparatus. Specifically, *Clausen* does not teach or suggest the track apparatus having a continuous flexible track having an upper length and a ground-engaging lower length, because the track 16 of *Clausen* does not engage the ground, at all. *Clausen* does not teach or suggest the track apparatus having an axle wheel engaging the inner surface of the flexible track along the upper length to drive the flexible track in response to rotation of the axle, because the track 16 of *Clausen* moves laterally and, as such, does not have an upper length (or a ground-engaging lower length). *Clausen* does not teach or suggest the track apparatus having a frame for mounting the axle wheel, because the frame of *Clausen* merely connects attachment 10 to vehicle 12.

. For at least these reasons, Applicant respectfully requests the § 102 rejection of claims 1-3, 5, and 6 be withdrawn. Claims 2-3, 5, and 6 are patentable at least by virtue of their respective dependency from independent claim 1.

- Claims 4 and 7-10 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Clausen* in view of *Wigoda* (U.S. Patent No. 4,698,150). Applicant respectfully traverses this rejection.

There would have been no suggestion or motivation to have combined the applied references because doing so would render those references inoperable for their intended purposes. See MPEP § 2143.01; In re Gordon, 733 F.2d 900 (Fed. Cir. 1984). Specifically, for example, for the proposed modification it would be necessary to change the orientation of the track 16 of *Clausen* by 90 degrees, and it would be necessary for such track 16 to engage the ground. Such modification would render inoperable the *Clausen* purposes of preventing the track 16 from contacting the ground (with landmines) and using the track 16 for moving earth on the blade to the side of the vehicle 12. Accordingly, there would have been no motivation to have combined the references as posited in the ground of rejection.

Even if there had been motivation to have combined the applied references, the secondary reference to *Wigoda* does not cure the above-noted deficiencies of the primary *Clausen* reference. Specifically, *Wigoda* does not teach or suggest a receiving area located proximate the blade for receiving earth scraped from the ground surface by the blade, a rotatable axle for providing movement of the scraper to allow the blade to scrape the earth, the axle connected with respect to the blade and the receiving area, or a track apparatus connected with respect to the rotatable axle, the track apparatus having: a continuous flexible track having an upper length and a ground-engaging lower length; an axle wheel engaging the inner surface of the flexible track along the upper length to drive the flexible track in response to rotation of the axle; and a frame for mounting the axle wheel, as claimed.

*Wigoda* discloses a beach trash machine having a blade 24 at the back of vehicle 12 for grading the beach and removing the tire tracks left by tires 22 (e.g., 2: 45-49). The vehicle 12 has a front shovel 18 that may be raised over the cab of vehicle 12 so that the contents of the shovel may be emptied onto chute 16 for transfer into container 14 (e.g., 2: 38-41).

By comparison, the container 14 of *Wigoda* does not meet the above-noted limitations of the claimed receiving area because the container 14 is not located for receiving earth scraped

from the ground by a blade such as is claimed. There is no teaching or suggestion of any axle in the *Wigoda* reference. There is no teaching or suggestion of any track (as a structure) or any track apparatus in the *Wigoda* reference.

Since the applied references, alone or in combination, fail to teach or suggest all the claim limitations, the statement of alleged motivation in the ground of rejection is inapposite.

For these reasons, Applicant respectfully requests the § 103 rejection of claims 4 and 7-10 be withdrawn. Claims 4 and 7-10 are patentable at least by virtue of their respective dependency from independent claim 1.

- Claims 12-18, 25-33, and 35 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Clausen* in view of *Kelderman* (U.S. Patent No. 5,829,848). Applicant respectfully traverses this rejection.

There would have been no motivation or suggestion to have combined the references as posited in the ground of rejection because, as stated above, such a modification would render the *Clausen* device inoperable for its intended purpose, at least because the track 16 of *Clausen* would have to be placed onto the ground, which would subject the track 16 to damage, and because the track 16 of *Clausen* would have to be oriented vertically rather than horizontally, which would prevent it from moving earth to the side. See MPEP § 2143.01 and cited cases.

Even if there had been motivation or suggestion to have combined the references do not teach or suggest all the claim limitations. In particular, the secondary reference *Kelderman* fails to cure the deficiencies of the primary reference, at least because *Kelderman* does not teach or suggest the claimed receiving area, or a rotatable axle for providing movement of the scraper to allow the blade to scrape the earth, the axle being connected with respect to the blade and receiving area.

Since the applied references do not teach or suggest all the claim limitations, the

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Examiner's statement of alleged motivation is inapposite. For the above reasons, Applicant respectfully requests the § 103 rejection of claims 12-18, 25-33, and 35 be withdrawn. Claims 12-18, 25-33, and 35 are patentable at least by virtue of their respective dependency from independent claim 1.


### **Request for Interview**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly **requested to call** the undersigned at the telephone number listed below.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 10-0270.

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Respectfully submitted,

  
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Date: **November 1, 2004**